

THE MARK O. HATFIELD

# COURTHOUSE NEWS

---

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
A Court Publication Supported by the Attorney Admissions Fund  
Vol. VII, No. 5, February 23, 2001

## ADA

The parents of several autistic children filed an action against the Hillsboro School District alleging that the district discriminated against their children when it refused to allow a specialist into the classroom to observe the children in a classroom setting. Plaintiffs asserted claims under the federal Rehabilitation Act and the Americans with Disabilities Act, as well as O.R.S. 659 and various negligence theories.

Defendant moved to dismiss the federal claims on grounds that plaintiffs failed to exhaust their remedies under the Individuals with Disabilities in Education Act (IDEA). While the IDEA does not preclude relief under other statutes, it does expressly require exhaustion as a jurisdictional prerequisite to filing legal action. Judge Robert E. Jones denied the motion, finding that the issues and relief sought by the plaintiffs did not fall within the ambit of the IDEA's exhaustion requirement. The court also denied defendant's motion to strike the negligence claims on grounds that they were

redundant of the statutory claims, but directed plaintiffs to replead a single negligence claim with three specifications of breach. Glass v. Hillsboro School Dist., CV 00-1058-JO (Opinion, Dec., 2000).  
Plaintiff's Counsel:

Dennis Steinman  
Defense Counsel:  
Andrea Hungerford

## Labor

Judge Robert E. Jones denied a defense motion for summary judgment and granted a plaintiffs' cross-motion for summary judgment on the issue of the timeliness of plaintiffs' claims under the National Labor Relations Act. The court held that because the grievance process was ongoing and because the only reason the process had not concluded was because of the employer's actions, the claims were either timely or premature. The court also granted, in part, the Union's motion for summary judgment against plaintiff's claims relative to the timely processing of a grievance charge. Vattiat v. U.S. West Communications, Inc., CV 99-

1535-JO (Opinion, Dec., 2000).

Plaintiffs' Counsel:

David Hollander,  
Elden Rosenthal  
Defense Counsel:  
Calvin Keith

## Environment

Judge Helen J. Frye issued an opinion concluding that it was a clear error of judgment by the U.S. Army Corps of Engineers not to address compliance with its legal obligations under the Clean Water Act in the 1998 Record of Decision regarding the general plan of the Corps for operation of the Federal Columbia River Power System, including the four Lower Snake River dams. The district court required that the United States Army Corps of Engineers issue a new decision within 60 days replacing the 1998 Record of Decision which addresses its compliance with its legal obligations under the Clean Water Act. National Wildlife Federation v. U.S. Army Corps of Engineers, CV 99-442-FR (Opinion, Feb. 16, 2001). The full text of the decision can be

found at

<http://www.law.uoregon.edu/court/opin.html>.

## Social Security

A claimant appealed the denial of disability benefits and the government moved to remand the appeal for further proceedings. The government agreed that the ALJ failed to provide adequate reasons for disregarding treating physician testimony. Plaintiff sought a remand for an award of benefits.

Judge Anna J. Brown held that where plaintiffs' treating physicians stated that plaintiff would miss work at least 4 times a month, and where a vocational expert had testified that at least 3 absences per month would render plaintiff unemployable, the record was sufficiently complete. Because the ALJ and Appeals Council improperly discredited the treating physicians, their opinions were accepted as true and nothing in the record contradicted their opinions. Accordingly, the court remanded the action with directions to award benefits. Webb v. Apfel, CV 00-3025-BR (Opinion, Jan., 2001). Plaintiff's Counsel:

Ralph Wilborn

Defense Counsel:

William Youngman

## Immigration

Plaintiffs challenged the INS' denial of their application for status adjustment under INA § 245.

Plaintiffs were among the 90,000 aliens randomly selected in 1999 and offered the opportunity to apply for visas. Plaintiffs applied and were denied initially and upon reconsideration based upon the INS' determination that plaintiffs failed to maintain lawful status in this country since entry. In 1992, plaintiff had applied for political asylum and their visas expired during the pendency of that process. Judge Robert E. Jones held that plaintiffs did, in fact, fail to maintain lawful status during this time period. However, the statute excuses such lapses if they occur through no fault of the applicant or for technical reasons. The INS issued a regulation pursuant to that statute, further defining what constitutes a viable excuse for failing to maintain lawful status. That regulation outlines four narrow exceptions. Judge Jones held that the agency's regulation was far too narrow given the language of the statute and Congressional intent. The court held that the INS' denial of plaintiff's application was an abuse of discretion given the agency's misapplication of the law. Mart v. Beebe, CV 99-1391-JO (Opinion, Jan., 2001). Plaintiffs' Counsel:

John Marandas

Defense Counsel: Craig Casey

## Labor

Plaintiff filed an action against his employer under the FLSA claiming amounts due for overtime based upon time he spent traveling from home to job sites. Plaintiff drove his own van, but carried a great deal of his employer's equipment and modified his van to accommodate that equipment. Judge Robert E. Jones noted that the general rule is that travel time is non-compensable, but that this rule is subject to the "indispensable to the primary goal of the employee's work" exception. The court held that this exception applies to §4(a) of the Portal-to-Portal Act, and that application of this test involved factual issues not amenable to summary judgment.

The court also denied a defense motion for summary judgment against the retaliation claim; finding that the fact that plaintiff was demoted after complaining to his employer about the pay issue was sufficient to raise an inference of retaliation. Steelman v. Telco Telephone Co., CV 00-518-JO (Opinion, Jan., 2001).

Plaintiff's Counsel:

Rick Klingbeil

Defense Counsel:

Karen Vickers